1930.

MAHARANI JANKI KUER *v.* COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.

COURTNEY TERRELL, C.J.

monthly and this income cannot be called casual because it is part of the well recognised methods of exploiting brick-fields to let them out on leases of this character; and, as I have said, it cannot be considered as in the nature of a capital sale of the assets of the assessee.

For these reasons I would answer the question put to us by stating that the income of the assessee from the manufacture of bricks is assessable to income-tax.

There are other questions which are raised by the Commissioner of Income-tax in his Letter of Reference but as to these they are governed by the recent decision of the Privy Council in *Probhat Chandra Barua* v. *King-Emperor*(1); and our answer to those questions in regard to this class of recoveries should be in the affirmative.

The opposite party is entitled to his costs which we assess at Rs. 50.

DHAVLE, J.—I agree.

APPELLATE CIVIL.

Before Ross and Scroope, JJ.

1930.

July, 18, 22, 29.

KESHO SAHU

v.

MUSAMMAT MUKTAKIMAN.*

Easement—privacy, right of—usage or grant.

A right to privacy is not an inherent right of a party and can arise only by express usage, by grant or by special permission.

*Appeal from Appellate Decree no. 63 of 1929, from a decision of R. B. Beevor, Esq., I.C.S., Subordinate Judge of Patna, dated the 10th July, 1926, confirming a decision of Maulvi Muhammad Khalil, Munsif of Patna, dated the 5th July, 1927.

(1) (1930) 57 Ind. App. 228.

Where, therefore, the plaintiff brought a suit for the closing of certain windows opened by the defendant in a newly constructed second storey of his house which was adjoining the plaintiff's, on the ground that the female apartments of plaintiff's house were overlooked and his privacy was destroyed.

Held, that the plaintiff's claim could not succeed.

Mahomed Abdur Rahim v. *Birju Sahu*(1), *Ram Lal* v. *Mahesh*(2), *Sri Narayan Chaudhury* v. *Jadunath Chowdhury*(3) and *Bhagwan Das* v. *Sheikh Zamurrad Husain*(4), followed.

Gokal Prasad v. *Radho*(5), not followed.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Scroope, J.

N. C. Ghose, for the appellant.

A. H. Fakhruddin, for the respondent.

SCROOPE, J.—Plaintiff and defendant are neighbours owning adjoining houses in Patna City, plaintiff's being holding no. 83 of circle 47 and lying immediately west of defendant's house, which is holding no. 85 in the same circle. Both derived title from a common owner of the houses, Mirza Wali Muhammad. Plaintiff brought the suit out of which this appeal arises alleging that the defendant has recently commenced rebuilding her house and in constructing one of the walls west of plaintiff's house has scraped off a strip of plaintiff's wall and encroached thereon; but the most important allegation, and the one with which this appeal is concerned, is that by opening windows in the newly constructed second storey the female apartments of plaintiff's house are overlooked and his privacy is destroyed. Plaintiff accordingly prayed for removal of the

(1) (1870) 5 Beng. L. R. 676.
(2) (1868) 5 Beng. L. R. 677, s. n.
(3) (1900) 5 Cal. W. N. 147.
(4) (1929) 119 Ind. Cas. 833.
(5) (1888) I. L. R. 10 All. 358.

1930.

KESHO SAHU v. MUSAMMAT MUKTAKI-MAN.

SCROOPE, J.

encroachment and closing of the offending windows. Both the Munsif and the Subordinate Judge held that there had been no encroachment on the plaintiff's wall as alleged. As regards the infringement of privacy the Munsif held that the plaintiff's privacy had been infringed; but he would not give him any relief; he wrote as follows on this point—

> "This is a cause of annoyance, no doubt, to the plaintiffs, but one has to put up with such annoyance in towns, where houses more often are situated side by side in congested area. The defendant requires those windows and doors to make her upper storey well ventilated and healthy and the law does not recognise the right of privacy unless it depends upon prescription, grant or local usage, which is not the case here [*vide Muhammad Abdur Rahman* v. *Brijoo Sahu*(1)]. The plaintiffs therefore cannot legally compel the defendant to have the doors and windows closed."

The learned Subordinate Judge agreed that there had been no encroachment but did not come to a finding as to the infringement of privacy; he held that even if it had been infringed the plaintiff could put up some kind of screen and had no right to compel defendant to block up her newly constructed windows, and that the suit had been rightly dismissed.

In appeal the learned Advocate for the appellant contends that the case should be remanded to the learned Subordinate Judge to come to a definite finding on the question of infringement of privacy with a further direction that if he found that the privacy had existed and that there has been a substantial infringement the plaintiff should be given a decree. The learned Advocate relies on *Gokal Prasad* v. *Radho*(2). That decision reviews at very great length the question of customary rights of privacy existing in India and the learned Judges of the Allahabad High Court there came to the conclusion that such right of privacy exists and has existed "in these provinces apparently by usage, or to use another word, by custom and substantial interference with such a right gives the plaintiff a good cause of action". The Calcutta

(1) (1870) 14 W. R. 103. (2) (1888) I. L. R. 10 All. 358.

cases, however, have not gone so far. *Mahomed Abdul Rehim* v. *Birju Sahu*(1) was a case from Patna where identically the same question as here arose; it was held that no such suit was maintainable and that a right to privacy could not be an inherent right of a party in this country. In this case Markby and Bayley, JJ. followed the decision of Phear and Hobhouse, JJ. in another Patna case—*Ram Lall* v. *Mahesh*(2). A third Patna case decided on similar lines and also referred to in that judgment is a decision of Steer and Jackson, JJ. in *Teekun Lal* v. *Seo Churan*(3). These cases are amongst those discussed in the judgment of Edge, C.J. in the case of *Gokal Prasad* v. *Radho*(4) and his conclusion is that "though the Calcutta cases are conflicting it may be inferred from some of those decisions that where a custom of privacy has been clearly proved any substantial interference would be an actionable wrong, provided of course such interference was not by consent or acquiescence of the party complaining". Here no such custom has been pleaded much less proved. In a later Calcutta case—*Sri Narayan Chaudhury* v. *Jadunath Chaudhury*(5)—Rampini and Pratt, JJ. held that "according to the rulings of this Court there is in Bengal no inherent right to privacy and that such a right if it can arise at all, can arise only by express usage, by grant or by special permission". This is the view taken in the judgment of the learned Munsif and in my opinion it is a correct statement of the law. In Allahabad the broad view taken in *Gokal Prasad's*(4) case had been doubted in a recent case—*Bhagwan Das* v. *Sheikh Zamurrad Husain*(6): "it could not possibly be suggested", say Boys and Young, JJ. "that the

(1) (1870) 5 Beng. L. R. 676.
(2) (1868) 5 Beng. L. R. 677, s. n.
(3) Unreported.
(4) (1888) I. L. R. 10 All. 358.
(5) (1900) 5 Cal. W. N. 147.
(6) (1929) 119 Ind. Cas. 833.

1930.

KESHO SAHU v. MUSAMMAT MUKTAKI-MAN.

SCROOPE, J.

effect of that decision was that a customary right of privacy existed at every single spot in the United Provinces or that every single individual in the United Provinces is entitled to rely upon such a custom". In that case plaintiff having failed to prove and not even having alleged that a customary right of privacy exists in their particular neighbourhood their suit was dismissed. For the very same reason I would dismiss this appeal with costs.

ROSS, J.—I agree.

Appeal dismissed.

PRIVY COUNCIL.

SIR CHARU CHANDRA GHOSE

v.

KUMAR KAMAKHYA NARAIN SINGH

1930.

October, 21.

ON APPEAL FROM THE HIGH COURT AT PATNA*.

Permanent Settlement—Shamilat or Shikmi Taluk within Zamindari—Alleged resumable Jagir—Record-of-Rights—Presumption—Title unaffected by Permanent Settlement—Ben. Reg. I of 1801, *s.* 14—*Chota Nagpur Tenancy Act*, 1908 (*Ben. Act VI of* 1908), *s.* 84 (*3*).

The respondent sued for a declaration that villages which had been included in his zamindari at the permanent settlement constituted a resumable *jagir* held under a grant from his predecessors, and were not a *shamilat* or *shikmi* taluk, that is to say, a taluk of which the holder was proprietor but paid Government revenue through the zamindar, although the villages were so entered in the record-of-rights prepared under the Chota Nagpur Tenancy Act, 1908.

Held, that the evidence did not rebut the presumption enacted by section 84(*3*) of the above Act that the entry in the record-of-rights was correct. The evidence showed that the villages had constituted an estate of which the defendant's predecessors were proprietors, and it was well settled that their title was not affected by the villages being included in the settlement made with the plaintiff's predecessors, also that a failure to apply for a separation of the estate under

*PRESENT: Lord Atkin, Lord Macmillan, and Sir John Wallis.